

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OMARRIO MORRISON,

Petitioner,

-against-

MICHAEL CAPRA,

Respondent.

ORDER

23 Civ. 2598 (VB) (AEK)

THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.

Currently before the Court is Petitioner Omarrio Morrison's motion to stay proceedings on his *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 while he exhausts certain state court claims. ECF No. 12. For the following reasons, the motion is DENIED AS MOOT.

In a letter dated March 20, 2023, which he attached to his original habeas petition, and a motion dated April 24, 2023, Petitioner requested that the Court stay these proceedings while he exhausted his claims for ineffective assistance of counsel, *Brady* violations, and prosecutorial misconduct in state court. ECF No. 1 at 3, 6; ECF No. 9. The Court denied Petitioner's requests without prejudice, and authorized Petitioner to refile his motion by May 26, 2023 to address the legal standard applicable for a request of a stay. ECF No. 11. In a motion dated May 22, 2023, Petitioner once again requested that these proceedings be stayed. ECF No. 12. On June 14, 2023, Respondent submitted a letter stating that on June 9, 2023, the Appellate Division, Second Department denied Petitioner's motion for leave to appeal with respect to the claims made by Petitioner in his most recent motion pursuant to Section 440.10 of the New York Criminal Procedure Law, and that Petitioner's previously unexhausted claims therefore are now fully

exhausted. ECF No. 13. In a letter dated June 17, 2023, Petitioner likewise wrote to the Court reporting that his motion for leave to appeal had been denied. ECF No. 14.

Accordingly, the Court denies as moot the motion to stay the habeas proceedings in this Court, because Petitioner's motion for leave to appeal before the Appellate Division has been denied. *See id.* at 2. Thus, it appears that Petitioner has exhausted the claims referenced in his previous filings requesting a stay.

By September 5, 2023, Respondent must file and serve (1) an answer, motion, or other response to the petition, and (2) the transcripts and briefs identified in Rule 5(c) of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner may file and serve any reply papers within 30 days from the date Petitioner is served with Respondent's answer.

The Clerk of Court is respectfully directed to mark the motion at ECF No. 12 as denied, to terminate the motion at ECF No. 12, and to mail a copy of this order to the *pro se* Petitioner.
SO ORDERED.

Dated: July 5, 2023
White Plains, New York



ANDREW E. KRAUSE
United States Magistrate Judge